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17 UNITED STATES DISTRICT COURT
18 NORTHERN DISTRICT OF CALIFORNIA
19 SAN JOSE DIVISION

20 YENNA WU, Derivatively on Behalf of) No. C-07-02268-RMW
21 Nominal Defendant EXTREME NETWORKS,)
22 INC.,) PLAINTIFF FRANK A. GRUCEL, JR.'S
23 Plaintiff,) OPPOSITION TO PLAINTIFFS YENNA WU
24 vs.) AND LINDA ERIKSON'S MOTION TO
25) APPOINT LEAD PLAINTIFFS AND LEAD
26) COUNSEL
27)
28 GORDON L. STITT, et al.,) DATE: August 17, 2007
29 Defendants,) TIME: 9:00 a.m.
30 – and –) COURTROOM: The Honorable Ronald
31 EXTREME NETWORKS, INC.,) Whyte
32 Nominal Defendant.)
33 _____

34 [Caption continued on following page.]

1 LINDA ERIKSON, Derivatively on Behalf of) No. C-07-02388-RMW
2 Nominal Defendant EXTREME NETWORKS,)
3 INC.,)
4 vs.) Plaintiff,
5 GORDON L. STITT, et al.,)
6 Defendants,)
7 – and –)
8 EXTREME NETWORKS, INC.,)
9 Nominal Defendant.)
10 FRANK A. GRUCEL, JR., Derivatively on) No. C-07-02848-RMW
11 Behalf of EXTREME NETWORKS, INC.,)
12 Plaintiff,)
13 vs.)
14 GORDON L. STITT, et al.,)
15 Defendants,)
16 – and –)
17 EXTREME NETWORKS, INC., a Delaware)
18 corporation,)
19 Nominal Defendant.)
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1 **I. Introduction**

2 On June 8, 2007, plaintiff Frank A. Grucel, Jr. (“Grucel”) filed a Motion to Consolidate
 3 Actions and to Appoint Frank A. Grucel, Jr. Lead Plaintiff and Appoint Lerach Coughlin Stoia
 4 Geller Rudman & Robbins LLP Lead Counsel (the “Grucel Motion”), setting it for hearing on July
 5 17, 2007. After having missed the deadline to oppose the Grucel Motion, plaintiffs Yenna Wu
 6 (“Wu”) and Linda Erikson (“Erikson”) filed a belated Motion to Consolidate Related Actions and
 7 Appoint Lead Plaintiffs and Lead Counsel (the “Wu/Erikson Motion”).

8 On May 31, 2007, Grucel commenced a shareholder derivative action on behalf of Extreme
 9 Networks, Inc. (“Extreme Networks”) against its directors and certain senior executives
 10 (“Defendants”) for breach of fiduciary duty and violations of federal securities law and state law.
 11 Grucel alleged that since at least 2000, Defendants caused Extreme Networks to secretly grant
 12 millions of stock options, many of which were backdated in order to provide Extreme Networks
 13 insiders with lower strike prices. ¶¶43-48.¹

14 All parties agree that consolidation is appropriate. In addition, Grucel should be appointed
 15 lead plaintiff and Lerach Coughlin Stoia Geller Rudman & Robbins, LLP (“Lerach Coughlin”) lead
 16 counsel.

17 **II. Consolidation of Related Cases Should Be Granted**

18 Three similar actions are pending in this district:

19 Abbreviated Case Name	20 Case Number	21 Date Filed
22 <i>Wu v. Stitt, et al.</i>	23 5:07-cv-02268-RMW	24 04/25/2007
25 <i>Erikson v. Stitt, et al.</i>	26 5:07-cv-02388-RMW	27 05/02/2007
28 <i>Grucel v. Stitt, et al.</i>	29 5:07-cv-02848-RMW	30 05/31/2007

1 Unless otherwise noted, all paragraph (“¶”) references are to the Verified Shareholder
 2 Derivative Complaint for Violation of the Federal Securities Laws and State Law Claims for Breach
 3 of Fiduciary Duty, Abuse of Control, Constructive Fraud, Corporate Waste, Unjust Enrichment,
 4 Gross Mismanagement, Action for Accounting and Violations of California Corporations Code, filed
 5 May 31, 2007 by Grucel, derivatively on behalf of Extreme Networks (the “Complaint”), *Grucel v.*
 6 *Stitt, et al.* (the “Grucel Action”).

1 Grucel understands that no party objects to consolidation. Consolidation should be ordered
 2 because the actions arise from the same facts and make similar allegations.

3 **III. Grucel Should Be Appointed as Lead Plaintiff and Lerach Coughlin Should
 4 Be Appointed as Lead Counsel**

5 Plaintiff Grucel should be appointed lead plaintiff. Grucel is best suited to serve as lead
 6 plaintiff because he has standing to assert claims on behalf of Extreme Networks for the entirety of
 7 the relevant period – having owned shares of Extreme Networks continuously since the Company’s
 8 initial public offering in April 1999. Likewise, his selection of Lerach Coughlin, a California-based
 9 law firm with nearly 20 lawyers in San Francisco, should also be approved. Appointing Grucel and
 10 Lerach Coughlin as lead plaintiff and lead counsel will streamline this litigation, reduce litigation
 11 costs and provide judicial economy. Absent exceptional circumstances not present herein, there is
 12 no presumed need for multiple lead counsel in derivative actions. *See, e.g., Theodore R. Kornreich*
Revocable Trust v. Barnholt, No. C 06-03345 JW, Order Consolidating Related Derivative Cases
 13 and Appointing Lead Plaintiff and Lead Counsel at 3-4 (N.D. Cal. Oct. 23, 2006) (appointing sole
 14 lead plaintiff and lead counsel); *Hutton v. McAdam*, No. C-06-0794-RSL, Stipulation and Order
 15 Consolidating Cases for All Purposes, Appointing Lead Plaintiff and Lead Counsel, and Setting
 16 Schedule for Filing of Consolidated Complaint at 3 (W.D. Wash. Oct. 3, 2006) (appointing sole lead
 17 counsel); *In re OM Group, Inc. Sec. Litig.*, No. 1:02 CV- 2163-DCN, Order at 6-7 (N.D. Ohio Mar.
 18 17, 2003) (appointing sole lead in case consolidating multiple derivative actions). *See* Williams
 19 Decl., Exs. A-C.²

20 Indeed, district courts have declined to appoint co-lead counsel absent a showing that co-
 21 counsel will better protect the interests at issue. *See, e.g., In re Reliant Sec. Litig.*, Civ. A. No. 02-
 22 1810 (Consolidated), 2002 U.S. Dist. LEXIS 27777, at *11 (S.D. Tex. Aug. 27, 2002) (multiple
 23 counsel “more commonly will create needless complications, administratively and otherwise,
 24 substantial multiplicity of effort, and materially increased litigation costs”); *Bell v. Ascendant*

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 26 ² “Williams Decl.” refers to the Declaration of Shawn A. Williams in Support of Plaintiff
 27 Frank A. Grucel, Jr.’s Opposition to Plaintiffs Yenna Wu and Linda Erikson’s Motion to Appoint
 Lead Plaintiffs and Lead Counsel, filed concurrently herewith.

1 *Solutions, Inc.*, No. Civ. A. 3:01-CV-0166, 2002 WL 638571, at *6 (N.D. Tex. Apr. 17, 2002);
 2 *Switzenbaum v. Orbital Scis. Corp.*, 187 F.R.D. 246 (E.D. Va. 1999) (appointing sole lead counsel);
 3 *In re Orbital Scis. Corp. Sec. Litig.*, 188 F.R.D. 237, 240 (E.D. Va. 1999) (later ruling continuing to
 4 uphold sole lead counsel following initiation of later actions seeking to represent a more limited
 5 investor class). Grucel respectfully submits that adding a second firm to work with Lerach Coughlin
 6 is unnecessary and may result in duplication under the unique circumstances of this action.

7 Moreover, Grucel has chosen Lerach Coughlin to serve as lead counsel on behalf of Extreme
 8 Networks because of the firm's unique qualifications and resources to pursue recovery on behalf of
 9 Extreme Networks. Lerach Coughlin is a national law firm with over 180 lawyers, including nearly
 10 20 lawyers in its San Francisco, California office. Lerach Coughlin's substantial presence in San
 11 Francisco will reduce litigation costs overall, improve communication with the Court, and generally
 12 streamline this litigation. Moreover, Lerach Coughlin and its shareholder derivative litigation
 13 department possess extensive experience litigating complex shareholder actions.

14 Further, while plaintiffs Wu and Erikson ask the Court to appoint plaintiffs Wu and Erikson
 15 as sole lead plaintiffs with their counsel Schiffрин Barroway Topaz & Kessler, LLP as lead counsel
 16 (Wu/Erikson Motion at 8), their motion fails to mention or explain their failure to timely oppose the
 17 Grucel Motion. Such failure cannot be cured by a letter to the Court or their attempt to make an end-
 18 run around the local rules by filing a separate Motion to Consolidate Related Actions and Appoint
 19 Lead Plaintiffs and Lead Counsel on July 10, 2007 – and then subsequently filing an untimely
 20 opposition to the Grucel Motion on July 18, 2007. Plaintiffs Wu and Erikson's failure to follow Civ.
 21 L.R. 7.3(a) regarding motion practice clearly demonstrates that they are not best suited to serve as
 22 lead plaintiffs on behalf of Extreme Networks.

23 **IV. Conclusion**

24 For all the foregoing reasons, Grucel respectfully requests that the Court grant his motion and
 25 deny the late-filed Wu/Erikson Motion.

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27

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1 DATED: July 27, 2007

Respectfully submitted,

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22 T:\CasesSF\Extreme Networks\BRF00043996.doc

CERTIFICATE OF SERVICE

I hereby certify that on July 27, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on July 27, 2007.

/S/

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Manual Notice List

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

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